

REMARKS:

The Office action of August 23, 2005 has been received and carefully considered. Reconsideration of this application in view of the following is respectfully requested.

This application has been especially frustrating to the inventor as it has been allowed and then rejected. The Declaration submitted March 4, 2003 has been accepted as effective then later considered ineffective. Consequently, it is hoped that the present amendment resolves the outstanding issues and allows this application to proceed forward.

Claims 9 to 12 were rejected as indefinite because of the use of the term "combination". Claims 9 to 12 have been amended to overcome this issue and withdrawal of this rejection is requested.

All of the pending claims were rejected as anticipated by or as obvious in view of Morrison or Morrison in combination with Reed. Without question Morrison teaches a similar invention. It is urged that this is because the Morrison invention was taught to the company of which Morrison works and to which the Morrison application is assigned by the inventor of the present application.

A Declaration was filed under Rule 131 on February 25, 2003

for the purpose of providing evidence of invention by applicant before the filing date of the Morrison application on November 9, 1998, as well as reduction to practice with due diligence, that is, evidence to "swear back" of the Morrison patent as a prior art reference. The Examiner has taken the position that the previously submitted evidence fails to meet the requirements of such a "swear back" procedure. While it is believed that the evidence submitted does meet the "swear back" requirements, applicant has painstakingly reviewed his prototypes, documents and records and found that while the titanium closure discussed in the prior declaration was not produced until 1999, a stainless steel closure was produced within the period from 1996 to 1997, well before the critical date of Morrison of November 9, 1998.

A Supplemental Declaration is enclosed herewith to submit this evidence. As is noted in the Declaration, the closure produced in the earlier time frame meets the requirements of the closure or implant called for in each of the pending independent Claims 1, 13, 17, 18, 19, 21, 22, 26, 50 and 51, as well as those claims dependent therefrom. It is urged that the indicated reduction to practice prior to November 9, 1998 meets the requirements of a reduction to practice in the United States prior to the effective date of the Morrison reference.

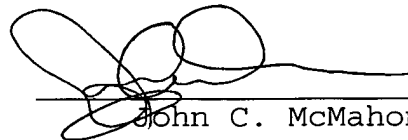
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Serial No. 09/644,777

Therefore, withdrawal of the rejections based on the Morrison reference are respectfully requested.

Respectfully Submitted,

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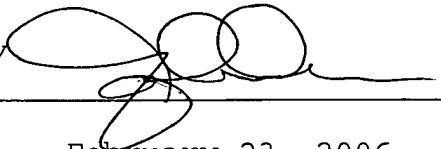


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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:
Commissioner For Patents,
P.O. Box 1450,
Alexandria, VA 22313-1450 on
February 23, 2006.

Roger P. Jackson
(Applicant)

By



February 23, 2006

(Date of Signature)